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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/921,540	08/03/2001	Jane S. MacCutcheon	1264-001	6837

27820 7590 10/16/2003
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EXAMINER

LOCKETT, KIMBERLY R

ART UNIT	PAPER NUMBER
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2837

DATE MAILED: 10/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/921,540

Applicant(s)

MACCUTCHEON, JANE S.

Examiner

Kim R. Lockett

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 July 2003.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 122-176 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 159-164 is/are allowed.
- 6) ☒ Claim(s) 122-132, 133, 135-148, 150-154, 156-158, 165-176 is/are rejected.
- 7) ☒ Claim(s) 133, 134, 149 and 155 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f):
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

2. Claims 121-127, 143, 145, 150-152, 165-167, and 172-176 are rejected under 35 U.S.C. 102(b) as being anticipated by Hale.

Hale discloses the use of a system for facilitating learning and playing of music comprising associating a color with musical note, the color having a name, the name alliterating with the note name and presenting the musical note in the associated color (column 10, lines 35-45). Hale further discloses that the use of animal indicia with the musical note is well known in the art ((column 1, lines 42-56). Hale also discloses the use of a pitch mark associated with a note and positioned on either the left or right side of the musical note denoting an octave group (see figure 1b)

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 129-132, 140, 147, 148, 153, 154, 168-171 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hale in view of Hoffman.

Hale does not disclose the specific use of a sharp and flat notes.

Hoffman discloses the use of a system for teaching music for certain wind instruments comprising the association of flat and sharp notes with colors on a musical instrument (see figure 2) is well known in the art (column 2, lines 7-16). Hoffman further discloses the use of specific notes associated with corresponding key. Hoffman also discloses that the use of various notes (column 3, lines 1-5). Hoffman also discloses a note formation technique for forming the musical note on a musical instrument with a plurality of formation identifiers (see figure 2).

Hale and Hoffman do not disclose the use of the specific colors as disclosed by the applicant. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the colors as taught by Hale and Hoffman to include those as disclosed by the applicant since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

5. Claims 141-143, 146, 156-158, and 148 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hale in view of Hoffman and Graham.

Hale and Hoffman do not disclose the specific use of a grid. Graham discloses the use of a colorful grid for musical instruments

Graham discloses the use of a system for teaching music presenting a grid in a colored fashion with a musical score (see figure 3) presenting note formation on the instrument (see figure 4) with a series of not actuators corresponding the instrument where the color matches the actuator(see figure 3).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device as disclosed by Hale with the identifiers as disclosed by Hoff and the grid as disclosed by Graham in order to provide an improved musical training device.

6. Claims 135-137 and 144 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hale in view of Hoffman and Bennett.

Hale and Hoffman do not disclose the specific use of stickers.

Bennett discloses a method of teaching music using stickers and painting portions of a musical instrument (column 10, line 43-50).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device as disclosed by Hale with the identifiers as disclosed by Hoff and the stickers as disclosed by Bennett in order to provide an improved musical training device.

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7. Claims 133, 134, 149, and 155 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Handwritten calculation:

$$\begin{array}{r} 567 \\ 3 \overline{) 1695} \\ \underline{9} \\ 115 \\ \underline{9} \\ 26 \\ \underline{24} \\ 20 \\ \underline{18} \\ 20 \\ \underline{18} \\ 20 \end{array}$$

Handwritten number: 57.00

8. Claims 159-164 are allowed.

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

10. Any inquiry of a **general nature or relating to the status of this application or filed papers** should be directed to the **Group receptionist whose telephone number is (703) 308-0956**.

Papers related to this application may be submitted to Group 2800 by facsimile transmission. Papers should be faxed to Group 2800 via the PTO 2800 Fax Center located at Crystal Plaza 4. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 O.G. 30 (November 15, 1989). The Group 2800

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CP 4 Fax Center number is (703) 308-77(22 or 24). Fax numbers that provide an auto-reply fax receipt are: for before finals (703) 872-9318 and after finals (703) 872-9319.


For assistance in **Patent procedure, fees or general Patent questions** calls should be directed to the **Patents Assistance Center (PAC)** whose telephone number is **800-786-9199**. Assistance is also available on the Internet at www.uspto.gov.

For requesting copies of Cited Art, Office Actions or the like, or General Problem solving, calls should be directed to the TC 2800 Customer Service Office whose telephone number is 703-306-3329 or by fax at 703-306-5515.

Any inquiry concerning **this communication or earlier communications from the examiner** should be directed to **Kim Lockett** whose telephone number is **(703) 308-7615**. The examiner can normally be reached on Monday through Thursday from 7:30 am to 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Nappi, can be reached on (703) 308-3370.

Kim Lockett
Patent Examiner
Art Unit 2837


KIMBERLY LOCKETT
PRIMARY EXAMINER